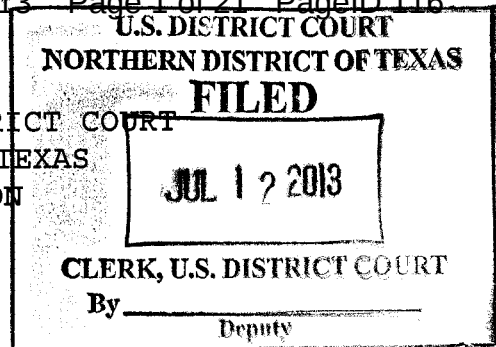


IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



RHONDA BESHEARS, ET AL.,

Plaintiffs,

VS.

PILGRIM'S PRIDE CORPORATION,

Defendant.

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NO. 4:13-CV-275-A

MEMORANDUM OPINION

and
ORDER

Now before the court for decision is the motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or alternative motion for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, filed in the above-captioned action by defendant, Pilgrim's Pride Corporation. Plaintiffs, Rhonda Beshears, Andrea Compton, Diantha Crick, Jennifer Croslin, Johnny Crouch, Lavonna Davis, Johnnie Fletcher, Genafer Foree, Jeffrey Long, Jessica Taylor, Matilde Taylor, Paula Taylor, Ruth Verhegghe, Augustina Wisdom, Terry D. Beshears and Rhonda Beshears as parents and/or natural guardians on behalf of B.B., B.S., and D.S., minor children, and Dustin Lee Taylor and Jessica Taylor, as parents and/or natural guardians on behalf of C.T., a minor child, filed a response, and defendant filed a

reply. Having now considered all of the parties' filings, the complaint by which plaintiffs initiated this action, and the applicable legal authorities, the court concludes that the motion to dismiss should be granted, and the alternative motion for more definite statement should be denied.

I.

Plaintiffs' Claims and the Motion to Dismiss

A. Plaintiffs' Claims

Plaintiffs define the nature of this case as a negligence action. In the complaint, plaintiffs alleged that defendant's employees were exposed to Methicillin-Resistant Staphylococcus Aureus ("MRSA"), a potentially life-threatening communicable disease, at their place of employment.¹ The employees unknowingly carried the infection home on their skin and clothing, thus exposing their families to the disease. As a

¹On November 2, 2012, in a related case, In re: Pilgrim's Pride Corp., et al., Civil Case Number 4:10-CV-292-Y, Judge Means concluded that the personal injury claims of the employee-claimants were within the scope of applicable workers' compensation laws, and ordered that those claims be adjudicated in the appropriate workers' compensation forums in Arkansas and West Virginia. Judge Means also ordered the non-employee claimants by February 28, 2013, to file a separate action in this court. The instant action followed. Because the parties in this action refer to, and rely, papers filed and rulings made in Case Number 4:10-CV-292-Y, the court takes judicial notice of the proceedings in that case. MacMillan Bloedel Ltd. v. Flintkote Co., 760 F.2d 580, 587 (5th Cir. 1985).

result, plaintiffs also have contracted, or may contract, MRSA.²

The complaint alleged that the infected spouses had suffered substantial damage to their quality of life, including loss of companionship and loss of consortium; the contraction of a potentially life-threatening infection; having to live with a potentially permanent source of MRSA infection; pain, disfigurement, and disruption of life caused by recurring MRSA outbreaks; and constant, ongoing concern and apprehension over those possible reoccurrences. Similar damages were alleged by the non-infected spouses and the infected children.

B. The Motion to Dismiss

Among other grounds for dismissal, the motion to dismiss sought a ruling that the exclusive-remedy provision of the Workers' Compensation Law barred plaintiffs' claims for loss of companionship, loss of consortium, and the drawback of living with a potentially permanent source of MRSA infection.³ However,

²The complaint groups plaintiffs into three categories: Infected Spouses who have contracted MRSA; Infected Children who have contracted MRSA; and Non-Infected Spouses who have not contracted MRSA. Because the court is dismissing the claims of all the plaintiffs, it is immaterial which plaintiffs were in each category.

³Defendant's motion refers to the plaintiffs' claims as "derivative" of the employees' claims. As the court explained in the telephone conference/hearing held June 12, 2013, in order to more accurately reflect the statutory language, the court will instead refer to the plaintiffs' claims as arising on account of the employees' injuries.

during a telephone conference/hearing held June 12, 2013, the court informed the parties that it was sua sponte extending the motion to dismiss to contend that all of the elements of damages alleged by plaintiffs in the complaint are barred by the exclusive-remedy provision of the Workers' Compensation Law.⁴

II.

Legal Standards Applicable to Motion to Dismiss

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides, in a general way, the applicable standard of pleading. It requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), "in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks and ellipsis omitted). Although a complaint need not contain detailed factual allegations, the "showing" contemplated by Rule 8 requires the plaintiff to do more than

⁴During the June 12, 2013 telephone conference, after informing the parties that it was extending the motion to dismiss to contend that all elements of damages are barred by the exclusive-remedy provision, the court indicated it would afford plaintiffs ten days in which to file a response. However, plaintiffs declined the court's invitation to file a response.

simply allege legal conclusions or recite the elements of a cause of action. Twombly, 550 U.S. at 555 & n.3. Thus, while a court must accept all of the factual allegations in the complaint as true, it need not credit bare legal conclusions that are unsupported by any factual underpinnings. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.").

Moreover, to survive a motion to dismiss for failure to state a claim, the facts pleaded must allow the court to infer that the plaintiff's right to relief is plausible. Id. To allege a plausible right to relief, the facts pleaded must suggest liability; allegations that are merely consistent with unlawful conduct are insufficient. Id. at 678 (citing Twombly, 550 U.S. at 557).

III.

Analysis

A. Defendant's "Exclusive-Remedy" Argument

The complaint alleges that the plaintiffs' employee-family members contracted MRSA "at their place of employment," Compl. at 2, thus conceding that the employees' claims arose in the course

and scope of their employment.⁵ Consequently, defendant argues, the exclusive-remedy provision of the Workers' Compensation Law, section 11-9-105(a), now bars plaintiffs' claims.⁶

B. Plaintiffs' Response

The gist of plaintiffs' response is as follows: Section 11-9-102(4)(A) of the Workers' Compensation Law defines "compensable injury" and requires that the injury be either "an accident or one of a specific list of diseases, neither of which include MRSA." Pls.' Br. in Opp'n to Def.'s Mot. to Dismiss Pursuant to Fed. R. of Civ. P. 12(b)(6) or, in the Alternative, Mot. for More Definite Statement at 7. Additionally, the Workers' Compensation Law defines the term "occupational disease," but also provides that:

No compensation shall be payable for any contagious or infectious disease unless contracted in the course of employment in or immediate connection with a hospital or sanatorium in which persons suffering from that disease are cared for or treated.

Id. (citing Ark. Code Ann. § 11-9-601(e)(2)). This specific

⁵Defendant also relies on Judge Means's previous determination that the employees' MRSA-related claims are within the scope of the Workers' Compensation Law.

⁶Plaintiffs contend that defendant is estopped from asserting the exclusive-remedy bar of section 11-9-105(a) because defendant previously urged Judge Means to retain jurisdiction of plaintiffs' claims. As the court informed the parties during the telephone conference/hearing held June 12, 2013, the court is not persuaded by plaintiffs' estoppel argument.

exclusion, plaintiffs argue, overrules the more general statements of compensability found elsewhere in the Workers' Compensation Law.

The implication in plaintiffs' response is that although the complaint alleged that the employees contracted MRSA at their place of employment, because that employment was not in a hospital or sanitorium, the MRSA infections are not covered "occupational diseases" under section 11-9-601. And because the employees' MRSA infections are also not included in the definition of "compensable injury" in section 11-9-102(4)(A), the employees' MRSA infections--although acquired at work--are not covered by the Workers' Compensation Law. Because the employees' MRSA infections are not covered by workers' compensation, plaintiffs maintain that the exclusive-remedy provision of section 11-9-105(a) cannot bar their claims. The court will address plaintiffs' arguments in detail in section D, infra.

C. The Exclusive-Remedy Provision

The exclusive-remedy provision of the Workers' Compensation Law, section 11-9-105(a), states in pertinent part:

(a) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer,

Ark. Code Ann. § 11-9-105(a). To properly consider whether section 11-9-105(a) bars plaintiffs' claims requires an understanding of that provision in light of the overall purpose of the workers' compensation system.

Establishment of the workers' compensation system represented a policy decision by the State of Arkansas to shift the burden of work-related injuries from employers and employees to the public at large, virtually eliminating any question of fault. Brown v. Finney, 932 S.W.2d 769, 771 (Ark. 1996). Hence, the Workers' Compensation Law was intended to mutually benefit employers and employees. Hughes v. Hooker Bros. & McKenzie Road Serv., Inc., 374 S.W.2d 355, 357 (Ark. 1964). Consistent with that intent, the exclusive-remedy provision

mirrors the general purpose behind our Workers' Compensation Act With the passage of such statutes, employers gave up the common-law defenses of contributory negligence, fellow servant, and assumption of the risk and, likewise, employees gave up the chance of recovering unlimited damages in tort actions in return for certain recovery in all work-related cases In other words, the exclusive benefits provision of our workers' compensation law favors both the employer and the employee, and thus we take a narrow view of any attempt to seek damages beyond that favored, exclusive remedy.

Brown, 932 S.W.2d at 771 (internal citations omitted).

Consequently, the sole remedy for an employee with an injury determined to fall under the Workers' Compensation Law is to file

a claim for such benefits.

Assuming for purposes of this section that the employees' MRSA infections are "injuries" under the Workers' Compensation Law, the policies underlying the exclusive-remedy provision must also foreclose any recovery for plaintiffs. By its plain language, section 11-9-105(a) establishes that workers' compensation benefits are the exclusive remedy for the "employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer." Ark. Code Ann. § 11-9-105(a) (emphasis added). Or, as the Arkansas Supreme Court phrased it, "[g]enerally, an employer who has secured for its employees the benefits of workers' compensation is immune from liability for damages in a tort action brought by an injured employee, his legal representative, dependents, and next of kin." Intents, Inc. v. Southwestern Elec. Power Co., 376 S.W.3d 435, 439 (Ark. 2011). Nothing further is needed, in the court's view, to persuade it that section 11-9-105(a) bars plaintiffs' claims against defendant. To conclude otherwise would defeat the purpose of workers' compensation by limiting recovery for injured employees to such benefits, while exposing employers to tort liability for related claims by family members.

Nevertheless, the court also finds useful the discussion and analysis of workers' compensation exclusive-remedy provisions found in Larson's Workers' Compensation Law, which divides such provisions into two general categories:⁸ the "narrow" type, "which says that the employee's rights under the workers' compensation act shall be 'in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer,'" and the "broad" type, which excludes actions by the employee, his or her personal representatives, spouse, parents, dependents, next of kin, or "anyone otherwise entitled to recover damages, at common law or otherwise on account of such injury or death." 6 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 101.01 (2012) (hereafter "Larson's") (footnotes and citations omitted). Given the language of section 11-9-105(a), the Arkansas exclusive-remedy provision would appear to fall within the latter "broad" category.

In discussing the "broad" type of workers' compensation

⁸The Arkansas Supreme Court apparently also finds Larson's Workers' Compensation Law persuasive, given the numerous references to it in that court's opinions. See, e.g., Automated Conveyor Systems v. Hill, 208 S.W.3d 136, 138-9 (Ark. 2005); VanWagoner v. Beverly Enterprises, 970 S.W.2d 810, 812 (Ark. 1998); Coats v. Gardner, 970 S.W.2d 802, 804 (Ark. 1998); Sontag v. Orbit Valve Co., 672 S.W.2d 50, 51 (Ark. 1984); Travelers Ins. Co. v. Smith, 947 S.W.2d 382, 385-6 (Ark. 1997).

statute, "which is by far the most common type of exclusive remedy clause," id. at § 101.02, Larson's observed that

the cases with near-unanimity have barred suits by husbands for loss of the wife's services and consortium, by wives for loss of the husband's services and consortium, by parents for loss of minor children's services, by dependent children, and by next of kin under wrongful death statutes.

Id. (footnotes omitted). Such exclusive-remedy provisions have been held to bar any remedy, even if the family member "gets no valuable compensation rights in place of the common-law or statutory death-action rights destroyed." Id. (footnote omitted). Although the court has been directed to no Arkansas authority considering loss of consortium or similar causes of action in the context of a workers' compensation claim, the logical conclusion, considering the foregoing discussion, is that the exclusive-remedy provision of section 11-9-105(a) would bar such claims.

D. Arkansas Workers' Compensation Law Encompasses the Employees' MRSA Infections

The court now turns to plaintiffs' contention that the employees' MRSA infections are not covered by the Workers' Compensation Law, even though the employees were exposed to MRSA in the course and scope of their employment. Section 11-9-

102(4)(A) defines "compensable injury" as follows:

(4)(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition;

(b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence; or

(c) Hearing loss which is not caused by a specific incident or which is not identifiable by time and place of occurrence;

(iii) Mental illness as set out in § 11-9-113;

(iv) Heart or cardiovascular injury, accident, or disease as set out in § 11-9-114;

(v) A hernia as set out in § 11-9-523; or

(vi) An adverse reaction experienced by any employee of the Department of Health or any employee of a hospital . . . related to vaccination with Vaccinia vaccines for smallpox

Ark. Code Ann. § 11-9-102(4)(A). Plaintiffs are correct in their

initial premise: section 11-9-102(4)(A) cannot be read to include infection with MRSA in any definition of "compensable injury."

The inquiry does not end there, however. Section 11-9-102(4)(C) also provides that "[t]he definition of 'compensable injury' as set forth in this subdivision (4) shall not be deemed to limit or abrogate the right to recover for . . . occupational diseases as set forth in § 11-9-601 et seq." The apparent intent of the statute was thus not to allow the definition of "compensable injury" to prevent an employee's recovery of workers' compensation benefits for a covered occupational disease.

Section 11-9-601(e)(1)(A) defines "occupational disease" to include "any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee" Ark. Code Ann. § 11-9-601(e)(1)(A).

Elsewhere, section 11-9-601 makes clear how an occupational disease is to be viewed in the context of the Workers'

Compensation Law:

Where an employee suffers from an occupational disease as defined in this subchapter and is disabled or dies as a result of the disease and where the disease was due to the nature of the occupation or process in which he or she was employed . . . , then the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disablement or death were

caused by injury, except as otherwise provided in this subchapter.

Ark. Code Ann. § 11-9-601(a) (emphasis added). Thus, under section 11-9-601(a), an employee suffering from an occupational disease that otherwise meets the requirements of section 11-9-601⁹ is entitled to workers' compensation benefits just as if the occupational disease were, instead, a "compensable injury."

Perhaps recognizing that all of the foregoing defeats their contention that the work-acquired MRSA infections are not covered by the Workers' Compensation Law, plaintiffs turn for support to section 11-9-601(e)(2), which proscribes compensation for any "contagious or infectious disease unless contracted in the course of employment in or immediate connection with a hospital or sanitorium" where persons suffering from that disease are treated. Plaintiffs' reliance on section 11-9-601(e)(2) is unavailing. Although the court's research has revealed a dearth of applicable authority, one Arkansas appellate court did consider section 11-9-601(e)(2), in Osmose Wood Preserving v. Jones, 843 S.W.2d 875, 878 (Ark. App. 1992). That court observed that the original Workers' Compensation Law included a schedule

⁹Section 11-9-601, as well as other provisions of subchapter 6, includes certain other restrictions and limitations on compensation for occupational diseases. Other than section 11-9-601(e)(2), those restrictions are not at issue in this action.

of compensable diseases that covered:

12. Infectious or contagious disease contracted in the course of employment in, or in immediate connection with, a hospital or sanatorium in which persons suffering from such disease are cared for or treated.

Id. The appellate court further noted that

[i]n 1976 . . . the occupational disease section, was amended by Act 1227. The listing of compensable diseases was discarded; however, a provision was maintained to protect hospital or sanatorium workers under § 81-1314(a)(5)(ii), which is now codified at Ark. Code Ann. § 11-9-601. When reviewing the statutory history of this provision, we observe that the category set out in § 81-1314(5)(12) (1948) was inclusive in nature and provided coverage for contagious or infectious diseases which hospital or sanatorium workers contracted through their employment. Section 11-9-601(e)(2) was not meant to exclude coverage for employees who contract an infection in the course of their employment because they do not work in a hospital or sanatorium, but rather was to protect hospital and sanatorium workers.

Id. (emphasis added). Hence, section 11-9-601(e)(2) was intended to be a rule of inclusion for certain infections contracted by certain categories of hospital employees, rather than a broad rule of exclusion of coverage as to all others.

In considering plaintiffs' argument, the court must bear in mind that "[p]rovisions of the Workers' Compensation Act are to be construed liberally in favor of the claimant." Id. A liberal construction of all of the foregoing leads to but one conclusion: a contagious disease or infection such as MRSA, that otherwise

meets the requirements of section 11-9-601, is covered by the Workers' Compensation Law.

A conclusion that the employees' MRSA infections are covered by workers' compensation under sections 11-9-102(4)(C) and 11-9-601 does not fully resolve the matter, however. The question remains whether the exclusive-remedy provision of section 11-9-105(a) limits the remedies of an employee suffering from an occupational disease or infection such as MRSA. The question arises due to the language of section 11-9-105(a) that makes workers' compensation benefits the sole source of recovery for an employee "on account of injury or death." Ark. Code Ann. § 11-9-105(a) (emphasis added). No mention is made in section 11-9-105(a) of any exclusive remedy for an employee whose claim involves an occupational disease or infection.

In light of the discussion in sections III.C. and III.D, supra, of this memorandum opinion and order, as well as consideration of the overall purpose of the Workers' Compensation Law, the court can conceive of only one reasonable conclusion: that the legislature intended for section 11-9-105(a) to establish workers' compensation benefits as the exclusive remedy for an employee's occupational disease or infection to the same extent as any accidental injury or death. Stated differently, the intent, for purposes of section 11-9-105(a), was for an

occupational disease or infection to be the legal equivalent of an injury under the Workers' Compensation Law. Mandating the exclusive remedy of workers' compensation for some, but not all, of the types of claims included within the Workers' Compensation Law would result in a bifurcated system: employees with occupational diseases or infections could pursue claims against an employer under either the Workers' Compensation Law or in a separate tort action, while employees suffering any other injury would be required to accept only workers' compensation benefits.

Such an absurd and inconsistent result is contrary to the express purpose and function of the Workers' Compensation Law, that is, to substitute workers' compensation benefits for "any and all liability" of the employer arising out of a compensable injury--or, in this case, a compensable disease or infection.

Odom v. Ark. Pipe & Scrap Material Co., 187 S.W.2d 320, 321 (Ark. 1945.); accord Vann v. Dow Chem. Co., 561 F. Supp. 141, 145 (D.C. Ark. 1983) ("So long as the accidental injury, occupational disease or infection arises out of and in the course of the employment, the Workers' Compensation Act affords the exclusive remedy."). As discussed, the exclusive-remedy provision "favors both the employer and the employee," to the extent that courts "take a narrow view of any attempt to seek damages beyond that favored, exclusive remedy." Brown, 932 S.W.2d at 771.

Accordingly, the court finds that the Workers' Compensation Law provides the exclusive remedy for the "employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer" on account of an employees' occupational disease or infection. Any other outcome would expose employers to the type of liability from which the Workers' Compensation Law was intended to shield them.

E. Plaintiffs' Authority Fails to Support Their Claims

Having concluded that section 11-9-105(a) bars plaintiffs' recovery for an occupational disease or infection, the court turns its attention to the only authority cited by plaintiffs pertaining to that subject. Plaintiffs rely on Travelers Insurance Co. v. Smith, 947 S.W.2d 382 (Ark. 1997), to support the proposition that section 11-9-105(a) does not bar a plaintiff's civil action if the Workers' Compensation Law fails to provide a remedy for the alleged wrong. However, Travelers is distinguishable from, and does not support, plaintiffs' claims.

In Travelers, the plaintiff, a widow, sued the insurance company and its claims adjuster, alleging that the adjuster's misrepresentations to her delayed the embalming of her husband's body, with the consequence that she was unable to hold an open-casket funeral. 947 S.W.2d at 383. The plaintiff asserted

claims of misrepresentation and outrage,¹⁰ and claimed that the defendants' conduct had caused her severe and extreme mental anguish. Id. The defendants argued that the plaintiff's claims were barred by section 11-9-105(a). However, the court was unable to construe the plaintiff's claims as "an aggravation of an initial, compensable injury suffered by her husband." Id. at 385. Instead, because the plaintiff's claims were based on a separate tort, independent of any workers' compensation claim, the plaintiff was allowed to proceed. Id. at 386.

Here, in contrast, none of the plaintiffs' claims are based on any separate, independent tort. Rather, all of the plaintiffs' claims arise from, are related to, or are a continuation or aggravation of an "initial, compensable injury" suffered by the employee-spouse or employee-parent. Consequently, as discussed previously, the exclusive-remedy provision of section 11-9-105(a) bars plaintiffs' claims.

It has not escaped the court's attention that plaintiffs have directed the court to no authority where the spouse or children of an injured employee successfully asserted the types of claims against a family member's employer as plaintiffs have asserted here. As noted previously, the "purpose and effect" of

¹⁰In contrast, the plaintiffs here did not allege claims of outrage, but alleged only negligence.

the Workers' Compensation Law "was to substitute, as to employment embraced within its terms, the liability created by it for any and all liability of the master arising from the death or injury of his servant." Odom, 187 S.W.2d at 321. Consequently, liability under the Workers' Compensation Law "is the only liability against the employer that may arise out of the death or injury of an employee subject to the Act." Id. (emphasis added). By establishing a workers' compensation system, the State of Arkansas chose to accept "the quid pro quo in which the sacrifices and gains of employees and employers are to some extent put in balance" Larson's, § 100.01. Here, the result of that balance is that plaintiffs' claims are barred by the exclusive-remedy provision of section 11-9-105(a).

* * * *

In considering the complaint in light of the standards required under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court concludes that plaintiffs have pleaded facts that conclusively show they have no plausible right to relief. Iqbal, 556 U.S. at 679. By alleging that the employees were exposed to MRSA at their place of employment, and that plaintiffs' exposure to MRSA resulted from the employees' work-related exposure, plaintiffs have pleaded themselves out of court due to the exclusive-remedy provision of section 11-9-105.

IV.

Order

Therefore,

The court ORDERS that the motion to dismiss filed by defendant, Pilgrim's Pride Corporation, be, and is hereby, granted, and that all claims and causes of action asserted by plaintiffs, Rhonda Beshears, Andrea Compton, Diantha Crick, Jennifer Croslin, Johnny Crouch, Lavonna Davis, Johnnie Fletcher, Genafer Foree, Jeffrey Long, Jessica Taylor, Matilde Taylor, Paula Taylor, Ruth Verhegghe, Augustina Wisdom, Terry D. Beshears and Rhonda Beshears as parents and/or natural guardians on behalf of B.B., B.S., and D.S., minor children, and Dustin Lee Taylor and Jessica Taylor, as parents and/or natural guardians on behalf of C.T., a minor child, against defendant be, and are hereby, dismissed with prejudice.

The court further ORDERS that defendant's alternative motion for more definite statement be, and is hereby, denied.

SIGNED July 12, 2013.



JOHN MCBRYDE
United States District Judge